



STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR
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October 29, 2012

Rocky M. Shroyer
DOC 956193
5501 South 1100 West
Westville, Indiana 46391

Re: Formal Complaint 12-FC-309; Alleged Violation of the Access to Public Records Act by the Fountain County Sheriff's Department

Dear Mr. Shroyer:

This advisory opinion is in response to your formal complaint alleging the Fountain County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Fountain County Sheriff William D. Sanders, Jr., responded in writing to your formal complaint. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records to the Department on July 24, 2012. Although the Department acknowledged in writing the receipt of your request, you have yet to receive any records that are responsive to it as of the date you submitted your formal complaint to the Public Access Counselor's Office.

In response to your formal complaint, Sheriff Sanders advised that he inadvertently misplaced your initial request. Copies of all records that are responsive to your request are enclosed and you will not be required to pay any fees in association with the records that were produced.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See* I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department's public records during regular business hours unless the records are

excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). A response from the public agency could be an acknowledgement that the request has been received and include information regarding how or when the agency intends to comply.

Effective July 1, 2012, the APRA provides a public agency shall provide records that are responsive to the request within a reasonable time. *See* I.C. § 5-14-3-3(b). The public access counselor has stated that factors to be considered to be considered in determining if the requirements of section 3(a) under the APRA have been met include, the nature of the requests (whether they are broad or narrow), how old the records are, and whether the records must be reviewed and edited to delete nondisclosable material is necessary to determine whether the agency has produced records within a reasonable timeframe. The APRA requires an agency to separate and/or redact confidential information in public records before making the disclosable information available for inspection and copying. *See* I.C. § 5-14-3-6(a). Section 7 of the APRA requires a public agency to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. *See* I.C. § 5-14-3-7(a). However, Section 7 does not operate to deny to any person the rights secured by Section 3 of the Access to Public Records Act. *See* I.C. § 5-14-3-7(c). The ultimate burden lies with the public agency to show the time period for producing documents is reasonable. *See Opinion of the Public Access Counselor 02-FC-45*. This office has often suggested a public agency make portions of a response available from time to time when a large number of documents are being reviewed for disclosure. *See Opinions of the Public Access Counselor 06-FC-184; 08-FC-56; 11-FC-172*. Further nothing in the APRA indicates that a public agency's failure to provide "instant access" to the requested records constitutes a denial of access. *See Opinions of the Public Access Counselor 09-FC-192 and 10-FC-121*.

As applicable here, approximately ninety days passed prior to the disclosure of all records that were responsive to your request. Sheriff Sanders indicated that the delay was attributed to the fact that he inadvertently misplaced your original request. From what has been provided, it is my opinion that the Department failed to comply with the requirements of 3(b) of the APRA in providing records that were responsive to your request in a reasonable period of time. However, as the Department has enclosed all records that are responsive to the request and waived any applicable fees, I trust that this is in satisfaction of your formal complaint.



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CONCLUSION

For the foregoing reasons, it is my opinion that the Department failed to comply with the requirements of 3(b) of the APRA in providing records that were responsive to your request in a reasonable period of time. However, as the Department has enclosed all records that are responsive to your request and waived any applicable fees, I trust that this is in satisfaction of your formal complaint.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage", written in a cursive style.

Joseph B. Hoage
Public Access Counselor

cc: Sheriff William D. Sanders, Jr.